IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6339 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SATISH P SHAH

Versus

APPROPRIATE AUTHORITY

Appearance:

1. Special Civil Application No. 6339 of 2002
MR TUSHAR P HEMANI for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 09/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Rule. Mr MR Bhatt, learned Sr. Standing Counsel for the respondent waives service of Rule on behalf of the respondent. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. The petitioner has filed this petition under Article 226 of the Constitution seeking mandatory direction against the respondent to release the refund of Rs.2,27,500/- which was illegally withheld by the respondent. The petitioner has further claimed interest at the rate of 12% on the said amount of refund from the date on which the petitioner was entitled to the said refund till the date of actual payment.

3. The brief facts giving rise to the present petition are that on 26-5-1991, the respondent passed an order under Section 269UD of the Act and compulsorily acquired the properties owned by the petitioner. However, from the total amount of consideration, a sum of Rs.2,27,500/- came to be deducted on account of the petitioner's share of stamp duty/registration charges etc.. The petitioner challenged the said order of the respondent in Special Civil Application No.7638 of 1995 before this Court and this Court while disposing of the said petition on 19-10-1995, inter-alia, held that the deduction made by the respondent on account of payment of stamp duty and registration charges etc. was incorrect and the respondent was therefore, directed to refund the said amount together with 12% interest per annum thereon.

Since the refund was not granted pursuant to the order of this Court, the petitioner wrote a letter on 23-2-1996 to the respondent-authority claiming the refund of the said amount of Rs.2,27,500/- alongwith interest at the rate of 12%. The petitioner has also thereafter sent reminders to the respondent-authority on 8-10-2001 and 5-2-2001. The petitioner has further written a letter on 28-5-2002 requesting the refund of the said amount along with interest at the rate of 12%p.a.. A further letter was also sent on 10-6-2002 to the respondent. In spite of writing several letters and reminders by the petitioner to the respondent-authorities, no action was taken by them and refund was not granted to the petitioner. The petitioner was, therefore, constrained to file the above petition before this Court seeking appropriate direction.

4. The petitioner has invited our attention to the order passed by this Court earlier on 19-10-1995 wherein

the respondents were specifically directed to decide the application if it is made by the petitioner within a period of six weeks from the date of receipt of the order and take appropriate decision thereon and if any calculation mistake as pointed out by the petitioner regarding any deduction which has been made while arriving at the amount of apparent consideration for making payment to them, the same shall be corrected by the respondents. It is pointed out to us that since there appears to be no calculation mistake, no application was made by the petitioner and hence there is no question of considering the said mistake. However, the fact remains that the petitioner was entitled to refund of Rs.2,27,500/- and interest was required to be paid at the rate of 12% thereon as per the direction given by this Court.

Since the period of more than six years has passed and yet the respondents have not granted the refund, the petitioner had to file the present petition before this Court.

5. Heard Mr Tushar P Hemani, learned advocate appearing for the petitioner and Mr MR Bhatt, learned Sr. Standing Counsel appearing for the respondent- authority.

6. In pursuance to the notice issued by this Court, affidavit-in-reply was filed by Shri RJ Desai, Assistant Commissioner of Income-tax, who is the appropriate authority wherein it is stated that he has received a communication dated 27-9-2001 from the CBDT requiring to send a D.D. for Rs.2500/- being court fee and other miscellaneous expenses for filing Review Petition against the order of the Hon'ble Supreme Court. It is further stated that since they were seeking further instruction from the CBDT no concrete reply was sent to the petitioner. It is further submitted that all necessary and precautionary measures have been taken by them requesting the CBDT to release the fund.

7. From the tenor of the affidavit, it appears that the respondent-authorities themselves are not disputing the petitioner's claim with regard to interest and there was no proper explanation given with regard to the delay in granting refund to the petitioner.

8. From the foregoing facts and having regard to the averments and submissions made in the petition, we are of the view that the petitioner was entitled to the refund of Rs.2,27,500/- along with interest at the rate of 12%p.a.. There was no justification on the part of the

respondent-authorities withholding the refund amount for such a long period without any justifiable reason.

9. In this view of the matter, we direct the respondent-authorities to grant the refund of Rs.2,27,500/- along with interest at the rate of 12%p.a. to the petitioner from the date of entitlement till the date of actual payment within a period of three weeks from the date of receipt of the writ of this Court or from the date of receipt of certified copy of the judgment.

10. At this stage, it is pointed out by Mr MR Bhatt, learned Sr. Standing Counsel appearing for the respondent that the department has filed the review petition before the Hon'ble Supreme Court and which is pending. He has, therefore, requested that the amount of refund shall be given to the petitioner subject to the outcome of the review petition and for releasing the amount of refund along with interest, the petitioner will have to furnish a security to the satisfaction of the appropriate authority.

11. In view of the above, we hold that the amount of refund of Rs.2,27,500/- along with interest at the rate of 12%p.a. from the date of his entitlement to the date of payment shall be released to the petitioner within a period of three weeks from the date of receipt of writ of this Court or a certified copy of this judgment subject to the outcome of the review petition which is pending before the Hon'ble Supreme Court and subject to furnishing a security by the petitioner to the satisfaction of the appropriate authority.

12. With the aforesaid directions, the petition is allowed. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)
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